IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITON NO. 270 OF 2003

1. Captain A.M. Kapur,
2. Smt. Santosh Gupta,
3. Captain C.L. Gupta,
4. Imtiaz Malkani,
All are residing at Apsara
Cooperative Housing Society Ltd.
61, Pali Hill Road, Bandra (W),
Bombay 400 050.

5. Apsara Cooperative Housing
Society Ltd.
61, Pali Hill Road, Bandra (W),
Bombay 400 050. ... Petitioners

Versus

1. The Deputy Registrar,
Cooperative Societies,
H/West Ward, Bandra,
Mumbai 400 050.

2. Mr. I.V. Thadvi,
Admknistrator and Cooperative
Officer, Grade - I, Mumbai,
Ward No. 69, Ground Floor,
Griha Nirman Bhavan, Bandra (E),
Mumbai 400 051.

3. Ms. Praiya Sunil Dutt,
Flat No. 8 W, Apsara Coop. Hsg.
Soc. Ltd. Pali Hill, Bandra (W),
Mumbai 400 050.

4. Feroze N. Mistry,
Flat No. 9 N, Apsara Co-op. Hsg. Soc.
Ltd. Pali Hill, Bandra (W),
Mumbai 400 050.

5. The Divisional Joint Registrar
Cooperative Societies,
Malhotra House, 6th Floor,
Opp. G.P.O. Fort,
Mumbai 400 001.

6. The State Minister for
Cooperation, Maharashtra State,
Mantralaya, Mumbai.

7. The Hon’ble State Minister for

Cooeration, Maharashtra State,
Mantralaya, Mumbai.

8. The State of Maharashtra. ... Respondents

Mr. A.S. Desai for Petitioner.

Mr. K.R. Belosey, A.G.P. for Respondnet Nos. 1, 5 to 8.

WITH

WRIT PETITION NO. 435 OF 2003

S.N. Bajpai,
Flat No. 6N, Apsara Co-operative
Housing Society Ltd.
61, Pali Hill Road, Bandra (W),
Bombay 400 050. ... Petitioner

Vs.

1. The Deputy Registrar,
Co-operative Societies,
H/West Ward, Bandra,
Mumbai 400 050.

2. The Divisional Joint Registrar,
Co-operative Societies,
Malhotra House, 6th Floor,
Opp. G.P.O. Fort,
Mumbai 400 001.

3. I.V. Thadvi,
Administrator and Co-operative
Officer, Grade I, Mumbaui,
Ward No. 69, Ground Floor,
Griha Nirman Bhavan, Bandra (E),
Mumbai 400 051.

4. Priya Sunil Dutt,
Flat No. 8W, Apsara Coop. Hsg.
Soc. Ltd. Pali Hill, Bandra (W),
Mumbai 400 050.

5. Feroze N. Mistry,
Flat No. 9 N, Apsara Co-op. Hsg.
Soc. Ltd. Palil Hill, Bandra (W),
Mumbai 400 050.

6. Apsara Co-operative Housing
Society Ltd.
61, Pali Hill Road, Bandra (W),
Bombay 400 050.

7. The State Minister for
Cooeration, Maharashtra State,

Mantaralaya, Mumbai.

8. The Chief Minister and Minister for
Cooepration, Maharashtra State,
Mantarlaya, Mumbai.

9. The State of Maharashtra ... Respondents

Mr. R.S. Ghadge for Petitioner.

Mr. K.R. Belosey, A.G.P. for Respondnet Nos. 1,
2, 7 to 9.

CORAM : F.I. REBELLO,J.
DATED : OCTOBER 05, 2004

ORAL JUDGMENT (Per F.I. Rebello,J.)

1. Both the Petitions are being disposed of by this common order, as the issues involved are the same.

. Writ Petition No. 270 of 2003 is filed by Petitioners Nos. 1 to 4 as members and share holders of the Respondent No. 5 which is a Society duly registered under the provisions of the Maharashtra Cooperative Societies Act, 1960. It is the case of the Petitioners that the Respondent No. 1 had initiated action under Section 78 of the Maharashtra Co-operative Societies Act, against the Petitioners at the instance of Respondent Nos. 3 and 4. The petitioners seek to challenge the notice dated 12.10.2001 and the order passed under Section 78 of the Act dated 1.12.2001. It is also pointed out that byelaws have been framed and

approved by the Registrar in the year 1961. In terms of the byelaws, the Managing Committee of the Petitioner No. 5 society is to be elected by rotation and as such, every year 1/3rd members have to retire. The tenure of the Managing Committee is of three years. It is not necessary to traverse the other contentions considering the narrow controversy. The Respondent No. 5 issued a show cause notice to the Petitioners setting out therein that considering serious defects mentioned in the show cause notice, the Managing Committee of the Society is doing business illegally and callously and not as per the provisions of the Maharashtra Cooperative Societies Act, 1960 and Rules made thereunder as also byelaws and not for the benefit of the society and members and as such it is harmful to continue the present managing committee. The 5th Respondent therefore, called upon the Managing Committee to submit explanation as to why an Administrator should not be appointed by superseding the Managing Committee under Section 78 of the Act. The Petitioners showed cause. By an order dated 1.12.2001 respondent No. 5 removed Capt. A.M. Kapoor-Petitioner No. 1, Capt. C.L. Gupta-Petitioner No. 3, Mr. S.N. Bajpai, B.S. Gandhi and Smt. S. Gupta-Petitioner No. 2 from the post of members of the Managing Committee. The 5th Respondent also held that the Managing Committee members are disqualified from the date of

the order till the end of the period of further one full tenure of being appointed nominated, elected as member of the Committee. By subsequent order of 1.12.2001, the 5th Respondent further ordered that the five committee members are removed from the post of Managing Committee Member under Section 78(1) of the Act. As the quoroum of the Managing Committee is three members as per the provisions of the registered byelaws of the society and as the quoroum of the Managing Committee cannot be completed by exercising rights under Section 77A of the Act was pleased to appoint an Administrator for the period of six months. An appeal came to be filed by the Petitioners being Appeal No. 171 of 2001. The appeal was filed by the 5 disqualified members. That appeal came to be disposed of by order dated 30.1.2002. During the pendency of the appeal, the appellants filed petition before this court being Writ Petition No. 5843 of 2001. This court disposed of the petition by order of 25.12.2001. The appeal was disposed off. Against the order of the appellate authority, the five appellants preferred a revision. That revision came to be dismissed by order dated 31.2.2003. Against that order, petitioners have preferred the present petition.

. On April 10, 2003 rule was issued. The learned Judge was pleased to stay the order of Respondent

No. 5 dated 1.12.2001 and directed the Managing Committee to function without administrator. The Members who would constitute the Managing Committee was also set out therein.

2. Writ Petition No. 435 of 2003 is by another member who was removed by the order of the Respondent No. 1 (Deputy Registrar) dated 1.12.2001. He has also prayed for the same reliefs in the same terms which have been prayed for by the Petitioners in Writ Petition No. 435 of 2003. Petitioner was also appellant in the appeal preferred as also in revision application, both of which have been dismissed. The records do not show whether any interim order was passed in this petition.

3. The controversy which arises and which has to be decided is whether the order of the Deputy Registrar is an order passed under Section 78(1)(a) or order passed under Section 78(1)(b).

. The relevant provisions of Section 78(1)(a) and (b) are reproduced herebelow :

> "78. Power of removal of Committee or member thereof - (1) ..... (a) (i) remove the committee, and

(ii) appoint a committee consisting of three or more members (who shall not be the members of the committees so removed) of the society in its place, or appoint one or more Administrators who need not be members of the society, but who shall not be the members of the committee so removed to manage the affairs of the society for a period not exceeding six months, which period, at the discretion of the Registrar, be extended by a further period not exceeding three months so, however, that the total period does not exceed nine months in the aggregate.

(b) remove the member and appoint any person as member of such committee in his place, or direct the society to elect or appoint a member in his place, for the remainder of the term of office of the member so removed.

Provided that, the member who has been so removed, shall not be eligible to be re-elected, re-appointed, or re-co-opted, as a member of any committee till the expiry of the period of next one full term of the committee from the date of which he has been so removed or till such

letter period as may be laid down under the provisions of section 73FFF or 144E, as the case may be."

4. Writ Petition No. 270 of 2003 was heard and posted for judgement and before the judgement could be delivered or pronounced, the learned A.G.P. moved that an opportunity be given of being heard. Consequently the learned A.G.P. has been heard in both the petitions.

. In Writ Petition No. 435 of 2003 two members of the society sought to intervene. They were given time and opportunity. No chamber summons is before this court for joining them as parties nor when the matter came up for final hearing, were they present. They were informed in the court of the date when they were present in person. Apart from that, during the pendency of the petition, and before the matter was finally heard, it is informed that elections have taken place and a new committee has been elected. At any rate, the consequences of this judgement can not result in reinstating the petitioners. The position of law is being declared. If the petitioners succeed, it will be only to set aside the disqualification for contesting the elections, as imposed on them.

5. At the hearing of this petition on behalf of the Petitioners their learned counsel has taken me through the show cause notice, to point out that the show cause notice to the petitioners was to remove the Managing Committee and to appoint an administrator. It is pointed out from the averments in the petition, that from 14th October, 2001 to 14th October 2002 in terms of the byelaws as it then stood, following were the members of the Managing Committee.

(1) Capt. C.L. Gupta, (2) L.D. Bhatia, (3) V.S. Gandhi, (4) S.N. Bajpai, (5) Santosh Gupta, (6) Capt. A.M. Kapoor.

. It is then pointed out that though the actual strength of the Managing Committee ought to have been seven members, in fact there were only six members. The Deputy Registrar issued notice to all the six members as can be seen from the affidavit filed by the Deputy Registrar in Paragraph 6(b). One of the members Shri. L S. Bhatia could not be served as he was abroad and consequently no order was passed for his removal. It is next pointed out that show cause notice was not for removal of the members in their individual capacity but for removal of the Managing Committee and appointing in its place as administrator, which can only be done in terms of section 78(a) (i) and (ii).

. On the other hand on behalf of the Respondents their learned counsel contends that there is mistake in the English translation in so far as show cause notice is concerned. It is contended that the show cause notice was issued only to five members whereas the Managing Committee was consisting of more than five members. It is then sought to be contended that the order passed by the Deputy Registrar was for removal of the members if the order is correctly considered and considering the subsequent order under Section 77(1)(a) of the Act was within jurisdiction. It is therefore, submitted that the orders of the Deputy Registrar, the Appellate authority and the Revisional Authority cannot be faulted and consequently both the petitions, should be dismissed and rule be discharged.

6. It is true that the Deputy Registrar was pleased to first pass an order dated 1.12.2001 removing five members of the Managing Committee and disqualifying them in terms as set out in the order. The second order came to be passed on the same date. Pursuant to that order, the Deputy Registrar has exercised powers under Section 77A of the Act and for the reasons set out therein appointed an Administrator. It is in that context that we have to consider the contentions advanced

by the Petitioners on the one hand and the respondent on the other.

. The Petitioners have relied firstly on the judgment of a learned Single Judge in Bhujangrao Narayanrao Deshmukh Vs. State of Maharashtra and Ors. 1995(1) Mh.LJ 437 to point out under what circumstances the proviso to clause (b) in sub section 78 becomes applicable. Next reliance is placed on the judgment in the case of Gurunath Madhavrao Jamalpure Vs. Zilla Parishad Teachers Coop. Credit Society Ltd. and Others, 1996(1) Mh.L.J.409 to contend that when the entire committee has been removed under Section 78(1)(a), the proviso to Section 78(1)(b) is not applicable. Lastly reliance was placed on the judgment of the Division Bench in the case of Sambhaji Ramji Umrekar Vs. District Supply Officer, Nanded and others, 1997 (3) Mh.L.J. 309 to point out that proviso to section 78(1)(b) is not applicable in the cases where the entire board/Managing Committee has been dissolved under Section 78(1)(a) of the Act.

. We may note that the order came to be passed on 1.12.2001. As on 14.10.2001 there were six members of the Managing Committee. From Paragraph 20 it is clear that after 15.10.2000 and upto 14th October, 2001 there were six committee members, five of whom

were appellants in the appeal. Those six members constituted the Managing Committee. Show cause notice was also issued to all the six members but one could not be served in view of the fact that he was abroad. Whatever may be the arguments advanced, on behalf of the counsel for the Governmental authorities, in the show cause notice issued on 12.10.2001 the Deputy Registrar has called on the members of the Managing Committee as to why "Administrator should not be appointed by superseding the present Managing Committee under Section 78(1) of Maharashtra Cooperative Societies Act, 1960". From this it will be clear that notice was to remove the Managing Committee and appoint Administrator in their place. In the affidavit in reply filed by Mr. M.N. Borikar dated 7.2.2003, in Paragraph 6 it is clearly set out that the show cause notice was issued to the society on 12.10.2001. Thereafter in Paragraph 6(d) it is pointed out that notices were sent to six members of the Managing Committee. It is therefore, clear that apart from the show cause notice, it is the contention in the affidavit before this court by the Deputy Registrar that the show cause notice was issued to six members which six members constituted the Managing Committee.

7. With the above, we may now consider the provisions of Section 78 as also Section 77A

considering the second order passed by the Deputy Registrar. Section 78(1)(a) and 78(1)(b) operate in two different situations. Section 78 (1)(a) operates when the committee is removed and in their place another committee is sought to be appointed or an administrator. In so far as sub Clause (b) is concerned, it is for removal of a member and appointment of another person as member in his place. In such an event, the member who is removed is disqualified to be eligible to be re-elected, re-nomination or re-co-opted as a member of the Committee till the expiry of the period of next one full term of the committee from the date on which he has been so removed. Section 77(A) however, operates where the Registrar is satisfied that the provisional committee has failed to make necessary arrangements for holding elections for the constitution of the first committee, before the expiry of its term as specified in sub section (1A) of Section 73 or at the first constitution of the meeting of any society there is a failure to elect all or any of the members of the committee or the term or extended term as the case may be, of the committee of any society or any of its members has expired or for any other reason election is held and there is a failure to elect all or any of the members required to fill the vacancies or any committee is prevented from entering upon office or a new committee has failed to enter upon office on

the date on which the term of office of the existing committee expired or where more than one group of person in a society is claiming to be elected as the committee members and proceedings in respect thereof have been filed in the cooperative court, the Registrar may, either suo motu or on the application of any officer of the society by order appoint any member or members of the society to be the member or members of the committee to fill the vacancies or a committee or administrator to manage the affairs till a new committee is elected. In the instant case, no notice as required under Section 77A was given to any of the members of the Managing Committee or new member of the committee. Notice was issued under Section 78. The situation as contemplated under Section 77A also did not exist as there was a committee functioning. It was only on the removal of the members constituting the Managing Committee that there ceased to be a managing committee. In my opinion as section 77 A was inapplicable the order was totally without jurisdiction firstly because no opportunity was given to the members in the show cause notice issued under Section 77A and on the contrary notice earlier given was only under Section 78 and secondly section 77A itself was inapplicable.

. Once that be the case it would be clear that

though the Deputy Registrar has purported to pass two distinct orders, the orders for all purposes are under Section 78(a)(i) and (ii). Though the Registrar purported to remove the members, what in fact he has done is removed the committee except one to whom he could not serve notice as he was abroad. At the relevant time there were no other members of the Managing Committee. Consequently the contentions as raised that the show cause notice was issued for the removal of the new members and not Managing Committee has to be rejected. Both the orders for removal of the members and appointment of the Administrator under Section 77A are without jurisdiction.

8. Consequently both the orders dated 1.12.2001 will have to be held to be without jurisdiction. Once that the case, orders of the Appellate Authority and Revisional Authority will also have to be set aside. Considering the above, rule in both the petitions will have to be made absolute in terms of Prayer Clause (a) in both the petitions.

(F.I. REBELLO,J.)